IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 370 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DENA BANK

Versus

VISHANDAS BIHARILAL PRO. OF ANAND SAREE CENTRE

Appearance:

MR PRANAV G DESAI with MR MANISH C. UPADHYAY for Appellant

NOTICE SERVED for Respondents No. 1-2

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 30/10/2002

ORAL JUDGEMENT

1. This appeal by Dena Bank is directed against the judgment and order dated 30th August, 1980 passed by the learned Civil Judge (S.D.), Nadiad in Special Civil Suit No.99 of 1975 disposing of the said suit as having abated, in view of the provisions of Gujarat Public

Moneys (Recoveries of Dues) Act, 1979.

2. The appellant Bank had filed the said suit to recover the sum of Rs.23,565.81 with running interest at 18% from the defendants, which, according to the bank, was due on account of the loan advanced to defendant no.1 against security of stock of cloth, shop and furniture and fixtures. The defendant no.2 was the guarantor. The defendants had contested the said suit by filing their written statement. After raising issues arising from the pleadings of the parties, the learned Judge started recording the oral evidence of the plaintiff. It appears from the evidence of Chinubhai Nanalal Joshi (Exh.32), who was examined on behalf of the plaintiff, that cash credit facility was given to the defendant no.1 against hypothecation of goods. In the middle of his examination-in-chief, the learned advocate for the defendants gave an application (Exh.51) praying that a preliminary issue be framed as to whether the suit was maintainable in view of the provisions of Section 7 of the Gujarat Public Moneys (Recoveries of Dues) Act, 1979. The learned Judge, after framing the preliminary issue, as prayed for, and after hearing the parties, came to the conclusion that the suit dealing was covered under the provisions of the said Act and, hence, the suit in the Civil Court was not maintainable. He, therefore, disposed of the suit as having abated.

3. The appellant bank has, therefore, filed this appeal challenging the said order.

4. Now, the view taken by the learned Judge that the suit was not maintainable in view of the provisions of the said Act, cannot be sustained in view of the decision of this court in the case of BANK OF BARODA vs. THAKKAR CHANDULAL ISHWARBHAI & OTHERS reported in 1985 G.L.H. 1204. In the said case, Bank of Baroda had filed the suit to recover the outstanding amount from the defendants to whom cash credit facility had been given. The Trial Court had held that the suit filed by the bank had abated in view of the provisions of Section 7 of the Act. M.B. Shah, J. (as he then was) held that the loan given in the said case was not by way of financial assistance or under the 'State sponsored scheme' and, hence, it was not covered under the provisions of Section 3. It was further held that if the suit is filed by bank against any person for recovery of loan, advance or credit which is not of specified nature, the suit will be maintainable and it would not abate. The said view was held to be the correct view by the Supreme Court in the case of VIJAYA BANK vs. KISHORE CHANDRA CHANDULAL PATEL

reported in AIR 1987 Supreme Court 1790. The present case is on all fours with the said case. The learned Judge was, therefore, in error in holding that the suit had abated. The appeal is, therefore, allowed. The impugned order of the learned Judge is set aside. The Special Civil Suit No.99 of 1975 in the Court of Civil Judge (S.D.), Nadiad will now proceed further from the stage where it was prior to the order of the Trial Court. No order as to costs.

(M.C. Patel, J.)
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